IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.34848, 47408, 47891,

48111, 49107, 49109 of 2006

and

M.P.Nos.1,2,3 & 4 of 2006

1. V. Kandasamy
2. P. Murugan
3.V. Kirubasankar
4. K. Palanivel
5. V. Subramani
6. P.S. Manoharan
7. A. Venugopalan
8. K . Ramalingam
9. P. Gunasekaran
10. M. Sureshbabu
11. P. Arivazhagan
12. S.A. Parthiban
13. V. Rajamohan
14. N. Harshababu
15. N.Ravi
16. T.A. Murugavel
17. R. Manivannan
18. K. Padmaraju
19. M. Ravichandran. .... Petitioners in
W.P.No. 34848 of 2006

(All are working Assistant Engineers
Tamil Nadu State Transport Corporation
C/o Murugavel, No.6/23, B-3, Maragadam Illam,
State Bank Colony Backside, Bharathipuram,
Dharmapuri District.

WEB COPY

Tamil Nadu State Transport Engineers
Association, Vellore, rep by its Secretary,
R. Sivakumar, No. 170, Govindarajan Nagar,
Arani Road, Bagayam, Vellore - 632 002.
.... Petitioner in
WP.No. 47408 of 2006

https://hcservices.ecourts.gov.in/hcservices/

Tamil Nadu Arasu Pokkuvarathu Kazhagam,
Poriyalargal Sammelanam, rep. by its President,
Mannarpuram,Tiruchy. ..Petitioner in WP 47891/06

Engineer's Association of Metropolitan
Transport Corporation Chennai II,
Rep by its General Secretary
R. Subramanian,
New No.28, Madurai Pillai Street,
Ayanavaram,
Chennai 600 023. ..Petitioner in WP.No.48111 of 2006

1. Jaganathan
2.P. Natesan
3. S. Mani
4. P. K. Andasamy
5. R. Govindaraju,
6. G. K. Thennavan
7. R. Agilandam,
8.R. Jaganathan
9. K. P. Palanisamy
10. S. Chellamuthu ...Petitioner in WP.No.49107/06

1. M. Sadasivam Pillai
2. S. Rajagopal
3. M. Nazeer Ahmed ...Petitioner in WP.49109/06

Vs.

1. The State of Tamil Nadu
Rep.by its Chairman/Secretary
Transport Department,
Fort St.George, Chennai.9 ... R1 in W.P.No.34848 &
47408/06

2. The Managing Director,
Tamilnadu State Transport Corporation,
No.12 Ramakrishna Road, Salem.7.... R2 in W.P.No.34848/2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The Managing Director,
Tamilnadu State Transport Corporation,
(Villupuram) Ltd,
Villupuram District. .... R2 in WP.No. 47408/2006

1. The Government of Tamil Nadu,
rep.by its Secretary,
Transport Department,
Fort St. George, Chennai.9

2.Metropolitan Transport Corporation Ltd.,
rep.by its Managing Director,
Pallavan Salai,Chennai -2.

3.Sate Express Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai-2.

4.Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
rep. by its Managing Director,
Rangapuram, Villupuram.

5.Tamil Nadu State Transport
Corporation (Salem) Ltd.,
rep. by its Managing Director,
12, Ramakrishna Road, Salem.

6.Tamil Nadu State Transport Corporation
(Coimbatore) Ltd., rep. by its Managing Director,
37, Mettupalayam Road,Coimbatore.

7.Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
rep. by its Managing Director,
Railway Station New Road,
Kumbakonam.

8.Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
rep. by its Managing Director,
Bye-Pass Road,Madurai. ..Respondents in WP No.47891/2006

1. The State of Tamil Nadu,
rep by the Secretary to Govt
Transport Department,
Secretariat, Chennai 600 009.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2. The Managing Director,
Metropolitan Transport Corporation
(Chennai Limitied,
Pallavan House, Pallavan Salai,
Chennai 600 002. ...Respondents in WP.48111/06

1. The Government of Tamil Nadu,
rep by its Secretary,
Transport Department,
Fort St George, Chennai.

2. Tamil Nadu Transport Corporation,
(Coimbatore) Ltd.,
rep by its Managing Director,
37, Mettupalayam Road,
Coimbatore. ...Respondents in WP.49107/06

The State of Tamil nadu rep by
the Secretary and Chairman,
Transport Department,
Fort St George, Chennai 9.

2. The Managing Director,
State Express Transport Corporation,
Tamil Nadu Limited,
Pallavan Salai,
Chennai 2. ...Respondents in WP.49109/06

PRAYER IN W.P.No.34848: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for records relating to the first respondent's proceedings made in Letter No.31467/ DOI/97-1 Transport (DO.I) Department dated 08.01.1998, to quash the same, and consequently direct the respondents to implement G.O.Ms.No.268 Transport (G.O.I) department dated 14.11.1997 forthwith for the purpose of promotion to the Managerial Cadre.

Writ of Declaration declaring that the Impugned clause IV of the Minutes issued in Lr.No.26/Cho/2006 dated 3.11.2006 and the ratio of 3:1 for promotion to the post of Assistant Manager amongst Degree holders and Diploma holders are discriminatory and null and void and consequently direct the respondents to accord promotion to the post of Assistant Manager in accordance with the security in the feeder category of selection Grade Senior Assistant Engineer (W.P.No.47408/2006)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Writ in the nature of Declaration, declaring that the ratio of 3:1 provided in S.Nos. 6 to 9 in Branch I: Part-A of Appendix-III to Common Service Rules of the respondent Corporations 2 to 8 among Degree holders and Diploma holders in the cadre of Assistant Engineers for promotion to the post of Asst.Managers as illegal, unjust arbitrary, irrational and unreasonable and consequently direct the respondents to promote the Assistant Engineers as Assistant Managers on selection on completion of 5 years of A.E. service. (WP 47891/2006)

Writ of Prohibition of Prohibiting the ratio of 3:1 for promotion to the post of Assistant Manager from the cadre of Assistant Engineers, prescribed for degree holders and Diploma holders as discriminatory and null and void and consequently direct the respondents to accord promotion to the post of Assistant Manager in accordance with the seniority in the cadre of Selection Grade Senior Assistant Engineer (W.P.No.48111/06)

Writ in the nature of Declaration declaring that the ratio of 3:1 Provided in S.Nos.6 to 9 in Branch I Part A of Appendix -III to Common Service Rules of the 2nd respondent Corporation among Degree holders and Diploma holders in the cadre of Assistant Engineers for promotion to the post of Assistant Managers as illegal, unjust arbitrary, irrational and unreasonable and consequently direct the respondents to promote the Assistant Engineers as Assistant Manager on selection on completion 5 years of A.E. service (W.P.NO.49107/06)

Writ of Declaration declaring that the impugned Clause IV of the Minutes issued in Lr.No. 26/Cho/2006 dated 3.11.2006 and the ratio of 3 :1 for promotion to the post of Assistant Manager amongst Degree holders and Diploma holders are discriminatory and null and void and consequently direct the respondents to accord promotion to the post of Assistant Manager in accordance with the seniority in the feeder category of Selection Grade Senior Assistant Engineer.(W.P.NO.49109/06)

For Petitioners : M/s.L.Chandrakumar W.P.No.34848
Mr.R.Thiagarajan, S.C.
for S.M.Subramaniam - 47408
for D.Hariparanthaman- 47891
Mr.N.R.Chandran, S.C.
for K.Rajasekar
Mr.K.M.Vijayanarayanan S.C.
for N.Subramanian
Mr.Venkatachalapathy SC
for M.Sriram

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Respondents : Mr.R.Viduthalai
Advocate General
Asst.by Mr.G.Sankaran A.G.P. (Writs)

COMMON ORDER

In all these Writ petitions the subject matter in question is in respect of the portion of the Common Service Rule originally created by the Pallavan Transport Corporation in so far as it relates to the promotion to the post of Assistant Manager from the cadre of Assistant Engineers in making the quota of 3:1 from the Degree holders and Diploma holders respectively on the basis that the discrimination among the Assistant Engineers for the purpose of promotion to the next post on the basis of Degree holders and Diploma holders as illegal.

2. The petitioners in these cases are either the Association of Engineers or individuals, who have been appointed as Junior Engineers in various Transport Corporations on the basis of their Diploma qualification in Engineering and thereafter promoted as Assistant Engineers which post is filled up either by direct recruitment from the holders of Degree in Engineering or promotion from the Junior Engineers, who were the Diploma holders. Their case is that after they were promoted to the post of Assistant Engineer either by promotion or persons appointed directly from the Degree holders there was no distinction and therefore according to them, for the nest post of Assistant Manager they have to be treated equally like the other Assistant Engineers who were appointed from Degree holders and there cannot be a further discrimination of restricting their rights as 3:1, namely, three fourth of the Assistant Engineers to be promoted from among the Degree holders in the post of Assistant Manager and one fourth of the Assistant Engineers from the Diploma holders to be promoted to the post of Assistant Managers.

3. It is admitted case that the Junior Engineers are appointed from Diploma holders and Assistant Engineers from Degree holders by way of direct recruitment. That apart as per G.O.Ms.No.13 Transport Department dated 14.01.2000, since there was stagnation of the Diploma holders appointed as Junior Assistants, the Government has enabled promotion to the next post of Assistant Engineers by a time bound scheme under which the Diploma holders, who were appointed as Junior Engineers after completion of 6 years were eligible to be promoted as Assistant Engineers in the scale of pay of 6000-150-8000. Likewise, the said Government Order also contemplated that persons holding the post of Assistant Engineers

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

after 6 years of service in the said category or Junior Engineers holding the said post for 12 years were granted senior scale pay of Assistant Engineers at Rs.5900-200-9000. Likewise, the said Government Order also contemplated that a person, who has completed 10 years as senior scale Assistant Engineer or 16 years as Assistant Engineer or 22 years as Junior Engineer granted selection grade Assistant Engineer salary at the rate of Rs.8000-275-13000.

4. According to the petitioners, there are 1150 Diploma holders in the level of Assistant Engineers in the various Transport Corporations and 250 Degree holders as Assistant Engineers. It is also their case that out of the said Diploma holders 200 of them have acquired B.E. Degree through part time course. Therefore, the Diploma holders in the level of Assistant Engineer constitute more than 75 percent. It is admitted that the next promotion post is in Managerial category, namely, the post of Assistant Manager.

5. According to the petitioners a person, who has completed 5 years as Assistant Engineer is eligible for the next post of Assistant Manager. There are 250 posts of Assistant Manager vacant in the various Transport Corporations. It is also admitted that in respect of Supervisory group there is a Common Service Rules as adopted by the respondent Corporations as per G.O.Ms.No.1373 dated 02.12.1985. As per the said Rules, Rule 59, contemplates the appointment to any category, which starts from the categories of post in working group and miscellaneous group in Traffic Department, Technical Department and Administrative Department and proceeds to the Supervisory groups in the Traffic Department, Technical Department and Administrative Department and ends with the Managerial cadre in the above said departments. Therefore, there are working groups, Supervisory groups and Managerial cadre, which are the hierarchy of posts in the department.

6. The Management cadre are mentioned in Part A of Appendix II and III which includes Manager (Technical), Manager (Materials), Deputy Manager (Technical) / Deputy Manger work, Deputy Manager (Materials) / Deputy Manager (Purchase) / Deputy Manager (Stores), Deputy Manager Civil, Assistant Manager (Technical) / Assistant Manager (Works), Assistant Manager Electrical, Assistant Manager Civil, Assistant Manager Purchase / Stores and Assistant Manager (Printing Press). Therefore, the post of Assistant Manager in respect of which the promotion is sought on quota basis, namely, 3:1 comes under the last of the Managerial cadre.

7. Likewise the Supervisory group is explained in Part B of Annexure II and III which includes Workshop Superintendent, General Foreman Electrical / Assistant Engineer Electrical, General Foreman

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Mechanical, Assistant Engineer Mechanical, Foreman Mechanical / Junior Engineer Mechanical, Foreman Electrical / Junior Engineer Electrical, Senior Supervisor Wireless / Assistant Engineer Wireless, Foreman Wireless / Junior Engineer Wireless, Assistant Engineer / Senior Supervisor Civil, Senior Supervisor Civil / Junior Supervisor Civil, Superintendent Stores, Assistant Engineer (Stores) / Senior Store Keepers, Junior Engineer Purchase and Junior Engineers Stores - Store Keeper are all under the Supervisory group.

8. Therefore, the posts of Junior Engineer as well as Assistant Engineers are under the Supervisory group. The remaining posts called working group are mentioned in Part C of Appendix I and II which includes Cleaner / Helper / Junior Tradesmen, Junior Material Handler / Store Attender, Junior Wireless Operator (ITI), Junior Masdor (Civil), Junior Tracer / Surveyor, Assistant Draftsman (Civil) / Mechanical, Wireless Operator Diploma and Assistant Store Keepers. The said category is available in both the technical department as well as on the traffic department of the respondent Corporation. In these writ petitions of course we are not concerned about the working group, namely, Part C.

9. The Common Service Rules 59(b) contemplates the method of recruitment in Appendix II and qualification in Appendix III. In Appendix II in respect of the post of Assistant Manager recruitment is made either by

1) Transfer from the holders of Assistant Manager Purchase or Stores or

2) By promotion from the holders of Assistant Engineer who possess Degree or Diploma with 5 years of experience on ratio of three fourth of the said appointment from among the holders of Degree in Engineering and one fourth of Diploma in Engineering or

3) By direct recruitment,

as it is seen in the Serial Nos.6,7,8,9 and 10 of Appendix II. There is also a note in respect of direct appointment in Serial No.6 stating that the ratio between the appointment by promotion and by direct recruitment shall be 3:1. Therefore, it is clear that for filling up of 4 vacancies of Assistant Manager, three shall be filled up by promotion and the remaining one by direct recruitment. Among the three posts to be filled up by promotion three fourth of them shall be from the holders of Degree and one fourth from Degree holders among the Assistant Engineers.

10. Likewise, Appendix III in respect of the said 3 categories and in accordance with Rule 59(c) of the Common Service Rules contemplates the qualifications that are applicable only for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

direct recruitment. As far as the reading of the said Appendix III shows that in respect of the appointment of Assistant Managers on direct recruitment, which shall be on basis of 3:1 ratio between the appointment of Assistant Managers by promotion and direct recruitment respectively, the qualification prescribed in all these cases of direct recruitment is Degree in the concerned subjects of course with experience, etc. As far as the post of Junior Engineer is concerned the same can be filled up either by transfer from among the holders of the post of Junior Engineer or by direct recruitment and the same is admittedly under the Supervisory group, namely, Part B and qualification required for appointment of such Junior Engineers on direct recruitment is Diploma in Engineering. Admittedly, the petitioners have been appointed with Diploma qualification by way of direct recruitment as Junior Engineers, which is in the Supervisory group.

11. Rule 60 of the Common Service Rules provides for promotion to the post in the Supervisory group as well as Managerial cadre. It contemplates that the said promotion depends upon the availability of vacancies, based on merit, ability, regularity of performance, regularity of attendance, post performance and general suitability. That apart Rule 60(d) states, for appointment by promotion to the post of Managerial cadre, completion of a minimum service required, namely,

1) When the appointment is to the post in the grade of Assistant Manager, 5 years in the grade of Assistant Engineering, etc.

2) When the appointment is to the post of Deputy Manager, 6 years in the grade of Assistant Manager and

3) When the appointment is to the post of Manager, 7 years in the grade of Deputy Manager.

The dispute involved as I have stated earlier in all these cases is only in cases of promotion from the Supervisory cadre of Junior Engineer to that of the Managerial cadre of Assistant Manager, which stipulates that while making such promotion three fourth of the appointment shall be from the holders of Degree in Engineering from among the Assistant Engineers and one fourth is from Diploma holders from among the Assistant Engineers. As far as the direct recruitment is concerned there is no dispute involved in this case.

12. The case of the petitioners is that while it is true that at the time when candidates were appointed as Junior Engineers. They were Diploma holders, as far as the post of Assistant Engineers is concerned, after completion of 6 years as Junior Engineers the said Diploma holders having become Assistant Engineers, they are equal to that of the Assistant Engineers directly recruited with Degree qualification. Thereafter, whether they are Degree holders or Diploma holders they are holding the same post of Assistant Engineers and they are not distinguished on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the basis of their Degree or Diploma. The contention of the petitioners is that when once a Junior Engineer has become an Assistant Engineer by way of promotion after completing 6 years, thereafter for the purpose of conferment of the senior scale and selection grade after 6 years of experience as Assistant Engineer and after 10 years in the senior scale as that of selection grade, there is no discrimination. It is only those persons who remain to be Junior Engineers with Diploma qualification are given special grade of scale or selection Grade of scale after 12 years or 22 years as Junior Engineers and therefore, once a Junior Engineer is promoted as Assistant Engineer, thereafter he cannot be discriminated for the purpose of next promotion as Assistant Manager only on the basis of the basic qualification of those Assistant Engineers. The strong reliance for this contention is based on the G.O.Ms.No.13.

13. Now that after 8 years the respondent Corporation are proceeding to fill up 250 vacancies of Assistant Managers in the Managerial cadre the decision of the respondents in drawing separate seniority list among the Assistant Engineers for graduates and diploma holders for promoting to the post of Managerial cadre, namely, Assistant Manager was objected to by the Diploma holders, who have been promoted as Assistant Engineers after completion of 6 years of service as Junior Engineers.

14. According to the petitioners, when once it is admitted by the respondent Corporation that when a Junior Engineer having Diploma has been promoted as Assistant Engineer and the post of Assistant Engineer is a feeder category for the post of Assistant Manager, the said post of Assistant Manager can also be filled up only by seniority because in the cadre of Assistant Engineer, as Assistant Engineers they belong to the same feeder category for the next post of Assistant Manager and there cannot be any distinction. According to the petitioners, there is no distinction in the services as Assistant Engineers between the Degree holders and Diploma holders either in performing the nature of duties or emoluments or there is no special treatment to an Assistant Engineer simply because he is a graduate and therefore, in such factual situation there cannot be a further distinction for the next promotion post of Assistant Manager on the basis that the Assistant Engineer is a Diploma holder or Degree holder and by imposing 3:1 in the promotion to the Assistant Manager between the Degree holders and Diploma holders is a gross discrimination and in effect the promotional avenue of the large number of Assistant Engineers, who have originally got Diploma and entered as Junior Engineers numbering 1150 cannot think about promotion to the post of Assistant Manger at all.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. According to the respondents giving of senior scale of pay or selection scale of pay does not amount to a promotion since there are no such posts as Senior Grade Senior Assistant Engineer or Selection Grade Senior Assistant Engineer. The concession was given only for the purpose of monetary benefits and not for giving any promotion. It is a time bound scale of pay, which is sought to be given, whether a person is made a Junior Engineer or Assistant Engineer or Senior Assistant Engineer or Selection Grade Senior Assistant Engineer they all form under the Supervisory category and when the promotion to the next managerial category to be made, the educational qualification is necessarily insisted, which is not discriminatory. It is also the case of the respondents that even the Junior Engineers having Diploma were permitted to undergo part time Degree course in Engineering and such persons, who have acquired degree qualification when they are posted as Assistant Engineers, are placed at the bottom of the seniority of the graduate Assistant Engineers on the date of acquisition of qualification even though his seniority will also be maintained among the Diploma holders list of Assistant Engineers. Therefore, according to the respondents, there has been 2 seniority lists among the Assistant Engineers of Diploma holders and Assistant Engineers of Degree holders and the Assistant Engineers of Diploma holders who obtained part time Degree in Engineering are placed in the bottom of the Assistant Engineers of Degree holders and while construing 3:1 ratio which ever is advantageous to him is conferred. It is also denied that Government Order in G.O.Ms.No.268 dated 14.11.1997 prescribes 3:1 ratio only in the initial recruitment level.

16. On the other hand, it is the case of the respondent Corporation as well as the Government that they are expected to follow the Common Service Rules. It is the specific case of the respondent Corporation that while making direct recruitment the required qualification for the post of Assistant Manger, which is of Managerial category is only Degree and not Diploma. It is only in cases of promotion, which is also recognized as another mode of appointment to the next post of Assistant Manger, a chance is given to Diploma holders along with the Degree holders from among the Assistant Engineers in the ratio of 3:1 between Degree and Diploma holders respectively. Therefore, it is only more on a concession since such Diploma holders even if they have become Assistant Engineers by virtue of 6 years of experience as Junior Engineers cannot expect themselves to be appointed in the Managerial category at all. It is always open to the respondents or the Government to impose educational qualification as a necessary ingredient for promotion. It is also the case of the respondents that the Diploma holders with prolonged years of service cannot be equated to that of Engineering graduates. It is also the further case of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondents that the purport of G.O.Ms.No.13 is not to give promotion but is only for the purpose of giving pay scale to avoid stagnation in payment.

17. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner in W.P.No.47891 of 2006 would rely upon the judgement of the Hon'ble Supreme Court reported in AIR 1974 SC 1 to substantiate his contention that there cannot be a distinction between Degree holders and Diploma holders. That apart he would also rely upon the judgement of the Supreme Court reported in 1989 Suppl.(2) SCC 344 that any quota prescribed in the promotion level will be invalid offending Article 14 and 16 of the Constitution of India since there cannot be discrimination among the equally situated people. The learned Senior Counsel also would submit that the judgement of the Hon'ble Supreme Court reported in 1993(2) SCC 340 P.Murugesan's case is factually different since there has been a distinction maintained between the Degree holders and Diploma holders from the beginning and they were always treated as distinct, whereas in the present case when once either as Diploma holders or Degree holders by way of direct recruitment on promotion, a person is appointed in the respondent Corporation as Assistant Engineers they were all under the same category and therefore, for the purpose of further promotion, there cannot be further classification.

18. Mr.N.R.Chandran, learned Senior Counsel appearing for the petitioner in W.P.No.48111 of 2006 would submit that when once promotion has been given to a common cadre the qualification of the candidates, which were required for the feeder category merges and therefore, when once the Diploma holders become Assistant Engineers it becomes integrated and therefore, there cannot be two different streams thereafter. He would submit that the quota system can be possible only if the distinction is maintained. According to the learned Senior Counsel the person holding Assistant Engineer is given Senior Assistant Engineer and Selection Grade Senior Assistant Engineer not automatically but based on performance and on merit and therefore, it should be treated as a cadre.

19. According to the learned Senior Counsel, after a person has become Assistant Engineer he is made as a Senior Grade Assistant Engineer or Selection Grade Senior Assistant Engineer and these two cases are to be taken as new cadres before going to the next promotion as Assistant Manager on the Managerial level. In this regard, he would refer to the counter affidavit filed by the Managing Director of the Metropolitan Transport Corporation Ltd., in W.P.No.32618 of 2002 filed by the Tamil Nadu Transport Undertakings Graduate Engineers Association challenging G.O.Ms.No.13 Transport Department dated 14.01.2000 wherein it was

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

admitted on behalf of the Corporation that the Senior Grade Assistant Engineer and Selection Grade Senior Assistant Engineer are the post created. Therefore, according to him, G.O.Ms.No.13 does not prescribe any quota between the Degree holders and Diploma holders. He would also further submit that after an Assistant Engineer has become Senior Assistant Engineer or Selection Grade Senior Assistant Engineer, thereafter the said G.O.Ms.No.13 will have no application and therefore, the Government Order does not prescribe any ratio between the Degree holders and Diploma holders. He would submit that even if such a ratio is prescribed it is violative of Article 14 since it amounts to a further reservation, which is not permissible in law.

20. He would submit that prescribing of such ratio is bad, that the G.O.Ms.No.13 has to be read with service rules and therefore, it cannot be said that it is only for the monetary benefits especially when the Government Order uses the term as time bound promotion. Therefore, according to him between the post of the Assistant Engineer and Assistant Manager the two intermediate posts are created as cadres. He would also submit that as far as the higher posts are concerned, there was no quota which can be made applicable relying upon the Judgement of the Hon'ble Supreme Court reported in AIR 1983 SC 763, apart from the Division Bench judgement in W.A.No.1542 of 1992 in respect of the same transport Corporation.

21. Mr.S.M.Subramaniam, learned counsel appearing for the petitioner in W.P.No.47408 of 2006 would submit by referring to G.O.Ms.No.268 Transport Department dated 14.11.1997 to state that from the post of Assistant Engineer to Assistant Manager the minimum period of service prescribed for eligibility for promotion is 5 years. He would also state that the Government Order clearly shows that the ratio is applicable only in initial level and in any event from Junior Engineer to Assistant Engineer and thereafter the promotion is only based on seniority and beyond the post of Deputy Manager the qualification prescribed in the Service Rules should be followed and therefore, according to him from the post of Assistant Engineer to Assistant Manager there is no question of ratio to be followed as per the G.O.Ms.No.268. He would also submit that the Common Service Rules are not statutory rules but they are only the resolutions of the board. He would also refer to various letters of the Government dated 10.03.1987 and 09.11.1987 to show that after the level of Assistant Engineer a further promotion is only based on seniority. However, it remains a fact that these two Government letters have been modified by revised instructions given under G.O.Ms.No.268 dated 14.11.1997. He would submit that as per G.O.Ms.No.13 Transport Department dated 14.01.2000 when a Diploma holder becomes a Senior Assistant Engineer after completion of 12

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

years or Degree holder becomes Senior Assistant Engineer after completion of 6 years, they are put in the common pool. There can be no quota. Even if a quota is to be applied, according to him it can be from the post of Senior Assistant Engineer to that of the Selection Grade Senior Assistant Engineer only. He would rely upon the judgement of the Hon'ble Supreme Court reported in AIR 1974 SC 1631 to show that only in cases were there are difference in pay and nature of work between the lower qualified and higher qualified candidates the question of distinction can be made, otherwise in the case of common category among the persons who are equal there is no discrimination possible.

22. Mr.D.Hariparanthaman, learned counsel appearing for the petitioner in W.P.No.47891 of 2006 and 49107 of 2006 would submit that the judgement of the Hon'ble Supreme Court in 1993(2) SCC 340 in Murugesan's case is different, since there has been a distinction made which continued, whereas in the present case after a person become an Assistant Engineer, there is no distinction at all and the purpose of very G.O.Ms.No.13 is to remove such distinction between Junior Engineers and Assistant Engineers and intention is to create cadre vice promotion.

23. Mr.Vijayanarayanan learned Senior Counsel appearing for the Degree holders would submit that the distinction between Degree holders and Diploma holders is on the basis of the education qualification, as a criteria. According to him, it has been an approved concept that education can be the basis of classification. He would submit that the ratio is adopted as it is seen in the counter affidavit of the Government, upto the level of Assistant Manager from Assistant Engineer and from Assistant Manager to Deputy Manager there is no ratio followed. The reason according him is that the more number of graduate engineers should occupy the higher post of Deputy Managers.

24. Mr.Vijayanarayanan, learned Senior Counsel would refer to the Common Service Rule 1(d) which shows that the Government instructions can be implemented with or without modification by the Corporation and in cases were the Government instructions are implemented it has the effect of superceding the rules. He would also insist that a reference to Rule 59 and also Appendix II and III of the Common Service Rules makes it very clear that as far as the direct recruitment is concerned for the post of Assistant Engineer Degree is the necessary qualification. He would submit that but for the ratio of 3:1 the Diploma holders who have become Assistant Engineer can never think of becoming the Assistant Manager and therefore the ratio is actually beneficial to the Diploma holders. He would also submit that G.O.Ms.No.13 is not intended for the purpose of making any promotion and it is only for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the purpose of pay protection, since there has been stagnation and according to him the Government Order has no relevancy at all on the facts and circumstances. He would submit that if the classification can be based on educational qualification then it has to be found out as to whether such classification has nexus to the objects sought to be achieved. By applying the said rules the petitioners have to fail. In this regard he would refer to the Constitution Bench judgement of the Hon'ble Supreme Court in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and others reported in 1974(1) SCC 19 and he would contend that equality can only be claimed among the equals. He would also by way of reply, answer the question that if the ratio system has rational basis from the post of Assistant Engineer to Assistant Manager, why it is not insisted for the next post of Deputy Manager from Assistant Manager, by referring to one of the portions of the said judgement of the Hon'ble Supreme Court to say that the Government must be given an opportunity to impose reformation at least at one point of time. Since in the present case the idea in the Managerial cadre beyond Assistant Manager not insisting for quota is only to have the higher officials as Degree holders with recognized educational qualifications.

25. He would also refer to various portions of the judgment of the Hon'ble Supreme Court as stated above wherein reference has been made about the Roshan Lal's case that there can be a classification even for making payment of salaries and he would also submit that as per the said judgement the quota system by rotation has been held valid. He would rely upon the subsequent judgement of the Supreme Court reported in 1989 Sup.(1) SCC 116 to show that the Constitutional Bench judgement rendered by Supreme Court in Triloki Nath Khosa has been followed. He would also rely upon the judgement of the Supreme Court in Murugesan's case reported in 1993(2) SCC 340 stating that the ratio of 3:1 between graduates and Diploma holders has been in vogue even prior to 1965 in the Government service and Corporation has been trying to implement the said ratio in its services also. According to the learned Senior Counsel, even assuming the earlier history of treating these persons equal is of no consequence when education is made as the basis of qualification. According to him it is for the petitioners to produce substantial materials to show as to how making education as a better way of qualification, it is invalid on the factual situation. He would also refer to various other judgements of the Hon'ble Supreme Court reported in 1996(10) SCC 1, 1997(3) SCC 103, 2001(1) SCC 475, 2001(1) SCC 442. He would submit that the purport of G.O.Ms.No.13 is only a payment of time bound scale of pay and that cannot be treated as a promotion or creation of any cadre as such.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

26. Mr.Venkatachalapathy learned Senior Counsel appearing for the impleaded party in W.P.No.48111 of 2006, namely, the Tamil Nadu Transport Undertaking Graduates Engineers Association would submit that there is no common seniority between Diploma holders and Degree holders and they are all maintained separately. He would submit that G.O.Ms.No.13 is not intended to any promotion. The word time bound promotion is only a misnomer, since it is only a scale of pay which is the intention and that is how the Government has understood the term of the Government Order. He would submit that even assuming that it is a promotion it can only be taken as a time bound promotion. He would also refer to the counter affidavit filed by the Government in the earlier Writ petition in W.P.No.32618 of 2002 to show that it is has been the clear case of the Government that there has been a separate list between the Degree holders and Diploma holders. He would also rely upon the judgement of the Hon'ble Supreme Court reported in 2003(12) SCC 280 and 1999(2) SCC 119 to show that one time promotion cannot confer a continuing benefit. He would also support the contention of Mr.Vijayanarayanan, learned Senior Counsel stating that the Hon'ble Supreme Court held in Murugesan's case that classification by educational qualification is a permissible classification. He would also submit that when educational qualification can be the permissible method of classification any materials contrary to that are to be placed by the petitioners, since the matter has to be decided on the factual position in each and every case by quoting various judgement of the Hon'ble Supreme Court apart from Murugesan's case, 1994(6) SCC 282, 2001(1) SCC 442 and 2004(3) SCC 734 and submit that the petitioners have not produced any contrary materials to dislodged the concept that education is a prudent method of classification. He would also submit that fixing of quota is a prerogative right of employer and educational qualification can be a criteria for fixing quota in promotion by referring the Judgement of the Hon'ble Supreme Court reported in AIR 2003 SC 2971.

27. Mr.R.Viduthalai, learned Advocate General, while supporting the contentions made by Mr.Vijayanaranan and Mr.Venkatachalapathy learned Senior Counsels, would submit that G.O.Ms.No.268 is applicable only to Managerial posts beyond the post of Assistant Managers. He would submit that the Writ petitions are bound to be dismissed on the ground of latches. According to him, the Common Service Rules have been in vogue from 1988 and the petitioners have chosen to challenge it only now. He would also submit that the petitioners have not chosen to challenge the Seniority list or promotion list but the formula, which has been adopted for the promotion from Assistant Engineer to Assistant Manager. He would also refer to the various prayers in the Writ petitions especially W.P.No.34848 of 2006 wherein the letter dated

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

08.11.1998 is challenged now. He would submit that the letter dated 08.01.1998 is only reflection of practice which has been followed from 1965 in various departments by adopting 3:1 ratio. When admittedly the Government has adopted the said 3:1 ratio almost in various departments from 1965, it cannot be expected to give a different policy in respect of different departments. The Transport Corporations are not governed by Article 309 of the Constitution of India and therefore, the administrative guidelines like the common service rules are given which are not statutory in character and they are executive guidelines. Even on 04.11.1997 by way of G.O.Ms.No.268 certain assurance has been given, Government is certainly entitle to supercede the same in 1998.

28. He would submit that even if the letter dated 08.01.1998 is bad in law it cannot revive G.O.Ms.No.268 and there cannot be an automatic promotion except that there can be only be a direction to consider the petitioners for promotion individually. He would submit that for the post of Assistant Manager nearly 1200 vacancies are to be filled up and 400-450 Assistant Engineers from Degree holders are available both in the Senior Grade and Selection Grade Senior Engineers and there are 1100 Diploma holders holding the post of Assistant Engineers as on date. He would also reiterate that as per the Common Service Rules, if a direct recruitment is made, only Degree holders can compete to become Assistant Managers but by way of 3:1 ratio the Government only enables even the Diploma holders to become Assistant Managers and they can go even up to the level of Deputy Manager also. He would submit that the concept of equal pay for equal work is not an obstract doctrine and according to him by referring the judgement of the Hon'ble Supreme Court reported in 2006(9) SCC 321, Article 14 of the Constitution permits merits and service as a method of classification. He would also rely upon the judgement of the Hon'ble Supreme Court reported in 2004(4) SCC 646 apart from 2006(9) SCC 82 to show that a person having higher qualification can be treated as a separate category. He would submit that the purport of G.O.Ms.No.13 is only a concession for payment higher pay.

29. Mr.N.Subramanian, learned counsel appearing for the Graduate Association impleaded in W.P.No.34848 of 2006 while adopting the argument advanced by Mr.Vijayanarayanan learned Senior Counsel apart from the learned Advocate General would submit that the letter dated 09.11.1987 deals with the Managerial Cadre not Supervisory cadre like that of Assistant Engineers.

30. The other counsels appearing for various petitioners including Mr.Hariparanthaman while adopting the arguments of the learned Senior Counsel Mr.N.R.Chandran and Mr.R.Thiagarajan would additionally submit that it is not the case of the Government that

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

any special skill is required for the post of Assistant Manager while it is not in dispute that education qualification can be a criteria for a classification.

31. I have heard all the respective learned Senior Counsels including learned Advocate General and perused the entire records.

32. Since the learned Advocate General has raised a point of latches and limitation, it is necessary to deal with the said issue. To find out as to whether the Writ petitions are hit by the principles of latches and limitation, invariably in all these Writ petitions I am able to find that what is questioned is the provision of Common Service Rules framed by the Transport Corporations especially relating to Rule 59 read with Appendix II wherein for the promotion to the post of Assistant Manager from the holders of Assistant Engineers a ratio of 3:1 is adopted between the Degree holders and Diploma holders among the Assistant Engineers. The crux of the issue involved in this case is that when once from the post of Junior Engineer the diploma holders are promoted after undergoing certain years of service and posted as Assistant Engineers they are equal to the other Assistant Engineers who are directly recruited with degree qualification and as Assistant Engineers they formed a common category and thereafter for further promotion in the Managerial level, namely, Assistant Manager the quota 3:1 cannot be continued. Admittedly, the Common Service Rules in respect of the employees of the Transport Corporations came into effect by virtue of G.O.Ms.No.1373 Transport Department dated 02.12.1985 and it is by virtue of the said rules the ratio between the Degree holders and Diploma holders was introduced in respect of promotions. By virtue of a provision under the said Common Service Rules, namely, Rule 1(d), the directions or orders or instructions are issued by Government from time to time or any other rules and regulations are framed by the Government in respect of the employees of the Corporation and such orders shall have the effect of superceding the relevant provisions of the Common Service Rules. The said Rule 1(d) runs as follows:

> "(d) The directions or orders or instructions that may be issued by the Government or any rules and regulations that may be framed by the Government, from time to time, in respect of the employees of the Corporation in particular or in respect of the employees of Public Sector Undertaking in general, as may be implemented with or without modification by the Management of the Corporation, shall have the effect of superseding the relevant provisions of these rules, until such time the relevant provisions of these rules are suitably amended or modified or varied or altered or deleted under rule 97

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

below so as to confirm to such directions or orders or instructions of the Government either in-toto or with such modifications as may be deemed necessary by the Board."

33. It is also seen as per Rule 97 that the board, namely, Board of Directors of the Corporation have overriding powers with a right to amend, modify, vary, alter delete or add any provisions to these rules. The said Rule runs as follows:

"97. Over riding powers of the Board:

(a) Nothing contained in these rules: shall be construed to limit or abridge the powers of the Board to relax these rules.

(b) The Board shall have the right to amend, modify, vary, alter, delete or add to any provisions of these rules."

34. The said rule is admittedly not a statutory rule framed under Article 309 of the Constitution of India. Therefore, the rule stands modified as and when the Government issues various orders. It is pursuant to the same, various Government Orders have been issued. The Government has issued a letter dated 09.11.1987 stating that the ratio of 3:1 between Degree holders and Diploma holders shall be followed at initial recruitment level (Assistant Engineers / Junior Engineers) only and thereafter the promotion will be as per seniority and that beyond Deputy Manager level the qualifications prescribed in the service rules shall be insisted. By G.O.Ms.No.268 Transport Department dated 14.11.1997 the Government has modified the earlier letter dated 10.03.1987, stating that for a person to be promoted as a manager from Senior Deputy Manager the qualification of 4 years as Senior Deputy Manager shall be taken into consideration. By a letter dated 08.01.1998 the Government by referring to the letter dated 09.11.1987 has made it clear that the following of 3:1 ratio for promotion between the Degree holders and Diploma holders in the State Transport Undertakings shall be followed only at one stage, namely, for promotion from Assistant Engineer to Assistant Manager.

35. In fact in one of the Writ petitions in W.P.No.34848 of 2006 the said letter dated 08.01.1998 is under challenge. According the learned Advocate General no one of the Writ petitions have challenged any seniority list or promotion list but what is challenged is the formula, which has been prescribed under the Common Service Rules framed as per G.O.Ms.No.1373 dated 02.12.1985 and the subsequent clarifications issued by the Government either by the letter or by the Government Orders, which are of year 1998 and even before that and therefore, according to him the Writ petitions are hit by latches.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

36. On the other hand, Mr.N.R.Chandran, learned Senior Counsel would submit that it is the cause of action which empowers the High Court under Article 226 of the Constitution of India to exercise its jurisdiction and in the present case even though the Common Service Rules have been enacted long before and so many orders and letters have been issued by the Government insisting for the applicability of 3:1 ratio among the Degree holders and Diploma holders in the respondent Corporations, the cause of action arises only when such formula are enforced. Therefore, the exigency is the enforceability of such formula and in such circumstances when a formula which dates back to previous years is sought to be enforced which is likely to be affected by such enforcement it is at that time the cause of action arise to approach this Court under Article 226 of the Constitution of India. He relies upon the judgement of the Hon'ble Supreme Court rendered in Kusum Ingots and Alloys Ltd Vs. Union of India and another reported in 2004(6) SCC 254. That was the case wherein an action of the Bhopal Branch of State Bank of India initiated under the provisions of Securitization and Reconstruction and Enforcement Security Interest Act 2002 in respect of a company registered at Mumbai under the Indian Companies Act and the Writ petition was filed in Delhi High Court. While deciding the said issue of constitutional validity of the Parliamentary Act, holding that the writ petition in Delhi High Court is not maintainable only because the seat of the Union of India is in Delhi, the Hon'ble Supreme Court has also incidentally held that the cause of action for Writ petition arise when the provisions of the Act are implemented and before that the Writ court would not decide the constitutional question in vacuum. The learned Senior Counsel would rely upon the following portion of the judgement of the Hon'ble Supreme Court, which runs as follows:

> "21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum."

37. Therefore according to him the law is well settled that it is only on the date of implementation of the formula which is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

sought to be done now the cause of action arose for the petitioners and therefore, there is no question of latches involved and the petitioners cannot be denied to raise their constitutional rights on that ground. On the face of it I am able to see that it is only now the cause of action has arisen and the petitioners have approached this Court, since as far as the petitioners are concerned, it is now for the first time the ratio of 3:1 in the respondent Transport Corporations are sought to be implemented between Degree holders and Diploma holders from the Supervisory cadre of Assistant Engineer to that of the Managerial cadre of Assistant Manager and therefore, applying the ratio of the Apex Court I do not think that the contention of the learned Advocate General that the Writ petitions are hit by latches is sustainable.

38. Now, coming to the historical background in respect of the facts of this case, it is the case of the respondent Corporation as well as the Government that the concept of ratio of Degree holders and Diploma holders have been in vogue in this State from 1965 in various departments which fact is not very much denied by any one of the petitioners. It is also not factually denied that the petitioners are Diploma holders in Engineering and were originally appointed in the respondent Corporations as Junior Engineers.

39. On the other hand, it is also not in much dispute that as far as the Assistant Engineers are concerned they were appointed by direct recruitment, only from among the Degree holders. As I have narrated in the opening part of this order, as per reading of the Common Service Rules, especially, Rule 59 read with Appendix II and III, the post of Assistant Manager is lower most post in the Managerial cadre and the post of Junior Engineer is in the Supervisory group. Therefore, we are not concerned with the next lower group of working group. A reference to the said rules also contemplate that the post of Assistant Manager is filled up by way of promotion from Assistant Engineer and by way of direct recruitment. As far as the direct recruitment is concerned the ratio between the appointment to the post by promotion and direct recruitment is at 3:1 which means that for every promotion of 3 Assistant Engineer to the post of Assistant Manager one shall be appointed by direct recruitment. It is also clear that as far as the direct recruitment is concerned the qualification under Appendix III contemplates only Degree in Engineering. Therefore it is clear that by direct recruitment a Diploma holder cannot be appointed as Assistant Manager, which is lower most category in the Managerial level.

40. It is only in respect of the category of promotion from among the Assistant Engineers to that of the Assistant Managers

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Appendix II states that among the Assistant Engineers to be promoted as Assistant Managers three fourth of them shall be chosen from the Degree holders and one fourth of them from Diploma holders. It is also clear from the various Government Orders that after the post of Assistant Manager for the next post of Deputy Manager the ratio of 3:1 is not made applicable. However, Assistant Managers, who have been promoted from the post of Assistant Engineers holding Diploma have a chance of going to the next Managerial cadre upto Deputy Managers and thereafter they are stagnated, since from the next cadre of Senior Deputy Managers till Senior Managers the Degree qualification is a mandatory requirement. As I have stated earlier, by various letters including the letter dated 08.01.1998 the Government has made it clear that the ratio of 3:1 between Degree holders and Diploma holders in the State Transport undertaking shall be made applicable only at one stage, namely, for promotion from Assistant Engineer to Assistant Manager. This is also made clear by a subsequent communication by the Government, in the letter No.00784/C2/87, dated 05.11.1990 addressed to the Managing Directors of All State Transport Undertakings by categorically making the decision of the Government as follows:

> "4. The Government have examined the above issue in greater detail in consultation with Highways and Rural works Department, Public Works Department and TANSI and they direct that the ratio of 3:1 between degree holders; and diploma holders be followed at one stage, i.e. for promotion from Assistant Engineer to Assistant Manager and that adoption of this ratio for promotion from Assistant Manager to Deputy Manager be dispensed with. Necessary amendment may be made to the Common Service Rules, with the approval of the Board of Directors of the respective Corporation."

41. This has been confirmed by subsequent letter of the Government dated 08.01.1998 also following the practice which has been in existence in adopting the said ratio in Highways and Rural Works Department and TANSI.

42. In the counter affidavit filed by the Joint Secretary to Government Transport Department, it is made clear that the ratio of 3:1 among the Degree holders and Diploma holders in promotion from Assistant Engineer to Assistant Manager has been followed from inception of the Transport Corporation in each of the Corporation based on the Common Service Rules and as per the guidelines issued by the Government and there was no anomaly noted or raised at any time.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

43. This part of the counter affidavit is also not in dispute. In the mean time the Government passed G.O.Ms.No.13 Transport Department dated 14.01.2000. It is also the case of the respondents in the counter affidavit and also as it is seen in the Common Service Rules that the Assistant Engineer post is a feeder category for the post of Assistant Manger and the post of Assistant Engineer is filled up either by direct recruitment which is by graduates or by promotion from Junior Engineers having Diploma or part time Degree holders based on the seniority in the Junior Engineers category and as far as the Assistant Engineers appointed on direct recruitment, as it is stated in the Appendix III the necessary qualification is Degree. It is also the specific case of the respondents that the Transport Corporations are not promoting any Assistant Engineers with Degree qualification directly to the post of Assistant Manager but only by following the quota of 3:1 among the Degree holders and Diploma holders, even though for the direct recruitment of Assistant Managers under the quota 3:1 between the promotion and the direct recruitment the Degree holders are directly appointed in accordance with the said quota.

44. It is seen that the Government passed G.O.Ms.No.13 Transport Department dated 14.01.2000. A reading of the said Government Order shows that at the instance of various unions of Assistant Engineers and Junior Engineers working in the Transport Corporations the Writ petition filed by them were withdrawn and thereafter the representation of the said associations for the purpose of re-fixation of the salary, since there has been stagnation in their service conditions, the Government has passed a time bound order. The operative portion of the said G.O.Ms.No.13 dated 14.01.2000 in paragraph 6 states that considering the stagnation of the Junior Engineers and Assistant Engineers a time bound promotion was issued in the following terms:

> "1) Those Junior Engineers who have completed 6 years of service are fixed with the salary of Assistant Engineers at the rate of Rs.5000-150-8000
> 2) The Assistant Engineers who have completed 6 years of service or Junior Engineers who have completed 12 years of service are fixed with the salary of Senior Assistant Engineers at Rs.5900-200-9000
> 3) The Senior Engineers who have completed 10 years of service or Assistant Engineers who have completed 16 years of service or Junior Engineers who have completed 22 years of service are fixed with the salary of Selection Grade Assistant Engineer at the rate of Rs.8000-275-13000."

45. Therefore, a reading of the said Government Order shows

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the intention is to confer certain monetary benefits to the higher rates to avoid stagnation among the Junior Engineers and Assistant Engineers. The Government Orders shows that it is to enable those Junior Engineers with Diploma qualifications, who were unable to become the Assistant Engineers by application of 3:1 ratio and therefore, there has been stagnation in their service conditions, the higher pay of salary payable to the higher post has been given even though they continue to be in the lower post. Therefore, a Junior Engineer with Diploma in Engineering having worked for 22 years and unable to reach the post of Assistant Engineer by the application of the ratio is fixed with the monetary benefit in the higher rate as that of Selection Grade Assistant Engineer but at the same time, he continues to be the Junior Engineer. This goes without saying that if he retires the post which will fall vacant to that of Junior Engineer even though he will be receiving the salary of the Selection Grade Assistant Engineer. Therefore, it can only be taken as a time bound carrier advancement scheme implemented by the Government to avoid stagnation among the employees. It is only a beneficial scheme of the Government. Therefore, it is not acceptable that the purport of the said Government Order is to create two different cadres of Senior Assistant Engineer and Selection Grade Assistant Engineer in between the post of Assistant Engineer and Assistant Manger and this Government Order does not in any way affect the ratio being followed at 3:1 among the Degree holders and Diploma holders of Assistant Engineers for promotion to that of the Assistant Managers. Therefore, mere conferment of the higher pay of scale as stated in G.O.Ms.No.13 does not confer any automatic right of promotion to the next Managerial cadre, namely, Assistant Manager.

46. In this regard as correctly pointed out by Mr.Venkatachalapathy learned Senior Counsel appearing for one of the impleaded respondents representing the graduate Engineers, the Apex court while defining the term time bound promotion has held that the intention is to avoid frustration among the employees by giving higher grade in terms of emoluments while retaining them in the same category. That was the judgement rendered in Dwijen Chandra Sarkar and another Vs. Union of India and others reported in 1999(2) SCC 119. The Hon'ble Supreme Court has categorically defined the term "time bound" in the following terms:

> "11. However, the position in regard to "time bound" promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

be given a higher grade in terms of emoluments-while retaining them in the same category. This is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up."

This has also been the view of the Hon'ble Supreme Court in Union of India and others Vs. Leelamma Jacob and others reported in 2003(12) SCC 280.

47. Now next question to be considered is as to whether the imposing of the said ratio at the rate of 3:1 after the Diploma holders as well as the Degree holders have been placed in the Common cadre of Assistant Engineers, who are receiving the same salary, making the same working condition, performing same functions with the same service conditions for next promotion to Assistant Manager is valid.

48. Before going into this question one factual aspect that has to be considered is as to whether the respondent Corporations are keeping the separate list of Assistant Engineers with Degree qualification and Diploma qualification on seniority basis. There is no difficulty to come to the conclusion that when once the Common Service Rules, in paragraph 59(b) and (c) along with Appendix II and III contemplate that the number of post to be promoted from that of Assistant Engineers to Assistant Manager is to be filed up in the ratio of 3:1 from among the Assistant Engineers having Degree and Assistant Engineers having Diploma, it presupposes the necessary duty on the part of the respondents Corporation to maintain a separate seniority list among the Assistant Engineers holding the Degrees and Diplomas. This is relevant because it is the case of the respondents as well as the Government in the counter affidavit that this system of promotion based on the quota 3:1 has been in vogue ever since the Common Service Rule was formulated. Therefore, it is relevant to quote the portion of the rule 59, which runs as follows:

"59. Appointments and Qualifications:

a. Appointment to any of the posts in any category shall be made--

i. by direct recruitment; or

ii. by promotion ; or

iii. by transfer

b. The method of recruitment to each category of post in Col.2 of Appendix II shall be as shown in the corresponding entry in Col.(3) thereof in the said Appendix.

Provided that, notwithstanding anything contained in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

this Rule, the Board may, for special reasons, decide to fill up any of the posts in the Corporation in any manner it may choose.

c. The Qualifications prescribed for direct recruitment to each category of post in Col.(2) of Appendix III shall be as shown in the corresponding entry in Col.(3) thereof in the said Appendix."

49. Rule 60 which speaks about the promotion from the post of Supervisory group from the Managerial cadre makes it very clear that such promotion depending upon the availability of vacancies based on merit, ability and regularity of attendance, post performance and general suitability. The said Rule 60(a) runs as follows:

"60. Promotions to posts in the Supervisory Groups and managerial Cadre

a. Promotions to any category or post in the Managerial cadre or a supervisory group shall be with reference to availability of vacancies, and based on merit, ability and regularity of attendance, post performance and general suitability."

50. Therefore, the promotion from Supervisory group to Managerial cadre itself is not automatic. The Appendix II which relates to the method of recruitment containing 3 parts, namely,
a) Managerial cadre
b) Supervisory group and
c) Working group
in the Technical Department (Branch I), Traffic Department (Branch II), Administrative Department (Branch III). In respect of method of recruitment regarding the post of Assistant Manager for example serial number 6 it speaks the method of appointment as follows:

"6. Assistant Manager (Tech.)/Assistant Manager (Works)

i. By transfer from among the holders of the posts of Assistant Manager (purchase) and Assistant Manager (stores)

OR

ii. By promotion from among the holders of the posts of Assistant Engineer (Mech) who possess a Degree or Diploma in Automobile or Mechanical Engineering and who have not less than five years experience as General Foreman / Assistant Engineer in a depot / Workshop, provided that the vacancies against promotion quota shall be filled up in the following manner.

a) 3/4 th of the Appointments from among holders of degree in Automobiles or Mechanical Engineering.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

b) ¼th of the Appointment from among holders of Diploma in Automobile or Mechanical Engineering. Provided that such promotions shall not be detrimental to the seniors who possess higher qualification namely Degree in Automobile or Mechanical Engineering and their overall seniority in the respective categories shall not be affected.

iii. By direct recruitment

Note: The ratio between appointment by promotion and by direct recruitment shall be 3:1."

51. Likewise in respect of qualifications for direct recruitment Appendix III speaks about the requirement of Degree as a necessary qualification about which there no dispute. Therefore, on the face of it, it is clear that when it is the admitted case that hitherto promotion from the post of Assistant Engineer to the Assistant Manager has been made in the ratio of 3:1 among the Degree holders and Diploma holders of Assistant Engineers, the respondents ought to have maintained a separate list of seniority among them. The said fact of maintaining a separate seniority list among the Assistant Engineers having Degree and Diploma is also understandable. The counter affidavit while stating that even unqualified persons in the working group having acquired degree by part time, have also been promoted as Assistant Engineers. Such person acquired degree qualification on part time bassis while in service as Assistant Engineers are placed at the bottom of seniority of graduate Assistant Engineers. That apart he will also be placed in the seniority among the Diploma holders list of Assistant Engineers and whichever is beneficial the option is given to him. The said portion of the counter affidavit, which is relevant and which has not been disputed, runs as follows:

"12. It is submitted that at this juncture it is also submitted that unqualified persons in the working group and higher qualified Junior Engineers who have acquired degree by part time have also been promoted as Assistant Engineer according to seniority. The part time degree holders who have acquired the qualification while in the service of Assistant Engineer are placed only at the bottom of the seniority of graduate Assistant Engineers on the date of acquiring the qualification as an incentive for acquiring higher qualification. But his seniority will also be mentioned in the diploma holders list of Assistant Engineers also. In fact some Writ petitioners have passed part time B.E., and they are in both the Seniority list so that they can avail the opportunity for promotion to Assistant Manager either as Degree holder or as Diploma holder according to 3:1 ratio

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

whichever is advantageous to them. Hence, the contention of the petitioners in this regard are denied as false."

52. In the light of the above factual background, we have to consider the argument advanced on behalf of the Diploma holders holding the post of Assistant Engineers as to whether they can be differently treated for promotion to the next Managerial cadre of Assistant Manger. As I have stated earlier, the Common Service Rules governing the employees of the respondents Transport Corporations are not statutory in character and by virtue of Rule 1 (d) any Government instructions or Government Orders or schemes if they are adopted in respect of the employees of the Transport Corporations the relevant provisions of the Common Service Rules in that regard will stand superseded. In any event it is admitted as on date that as far as the quota of 3:1 is concerned, it is in existence under the Common Service Rules and therefore, one need not go into that aspect, as to the validity or otherwise of various Government Orders. The only question, which remains to be considered, is as to whether the ratio or quota is valid or not.

53. In Roshan Lal Tandon Vs. Union of India reported in AIR 1967 SC 1889 an issue was raised between the direct recruits, namely, apprentice Trained Examiners and promotees from class of skilled artisans who were appointed in the ratio of 50:50 in the Grade D of Trained Examiners posts. When the promotion to the next Grade C was made from among the Grade D category the Railway Board has decided to fill up 80% of Grade C vacancies from the apprentice Trained Examiners, who were directly recruited and the remaining 20% from among the Trained Examiners, who were the promotees. It is also made clear that out of the 80% to be appointed from direct recruits of apprentice Trained Examiners they would be accommodated enblock in Grade C while in respect of 20% to be appointed from among Trained Examiners who were promotees a method of selection was imposed without following the seniority cum suitability. It was in those circumstances, the Hon'ble Supreme Court has held that such discrimination shown for promotion to the next Grade C only on the basis that initial appointment was from different source, namely, by direct recruitment or by promotion was not permissible in law.

54. It was subsequently in the Constitutional Bench decision of the Hon'ble Supreme Court rendered in Mervyn Continho and others Vs. Collector of Customs, Bombay and others reported in AIR 1967 SC 52, which was also decided almost at the same time when the judgement was given in Roshan Lal Tandon's case. While considering the rotational system for fixing seniority at the rate of 50:50 between the direct recruits and promotees, the Hon'ble Supreme Court while holding that when there is only one source of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

recruitment the question of rotation system will not apply has held that there was no inherent vice in a system if the service is composed in fixed proportion of direct recruits and promotees. These two judgements came to be considered by the subsequent Constitutional Bench in the The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and others reported in 1974(1) SCC 19 wherein the Apex Court has analysed not only the above said two judgements but also considered the effect of promotion based on educational qualification as to whether the same can be a basis of classification for the purpose of promotion. The question that was considered by the Hon'ble Supreme Court in that was as follows:

> "If persons gone from different sources are integrated into one class, can they be classified for the purpose of promotion on the basis of their educational qualifications"

55. That was also the case of dispute between the Diploma holders and Degree holders in Engineering. The contention raised on behalf of the Diploma holders was neither at the time of their appointment in the post of Assistant Engineers nor for the purpose of promotion to the post of Divisional Engineer, which has been subsequently changed as Executive Engineer the rules made any distinction between Diploma holders and Degree holders. While so the rules governing the service conditions cannot be changed retrospectively to classify employees on the basis of educational qualification in order to deny promotion to Diploma holders by the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rule 1970 stating that promotion to the Executive Engineers post will be available only to those Assistant Engineers who possess Bachelor Degree in Engineering or held qualification of AMIE and was put in at least 7 years of service in J & E (Gazetted) Service, thereby preventing the Diploma holders who have become Assistant Engineers under the previous rules of 1939 to be considered for the Executive Engineers posts.

56. While dealing with the argument that if the Degree qualification is considered to achieve efficiency in the post of Executive Engineer from the cadre of Assistant Engineer, there is no rationale that similar qualification for promotion to the higher post Superintending Engineer which is higher than the Executive Engineer, no such qualification is required. While holding that

> "qualification, therefore, must be truly founded on substantial difference which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved"

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

has categorically held by referring to the earlier judgement in State of The State of Mysore and another Vs. P.Narasingh Rao reported in 1968 SC 349 that

> "Educational qualification have been recognized by this Court as a safe criterion for determining the validity of classification"

Ultimately holding

> "to put it differently once the direct recruited, promotees are absorbed into one cadre they form one class and they cannot be discriminated for a purpose of further promotion to the higher Grade C."

57. The Hon'ble Apex Court has also held about the Roshan Lal Tandon's case

> "Roshan Lal Tandon's case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class they cannot be classified for the purpose of promotion on a basis other than the one that they were drawn from different sources. In the instant case, classification rest fairly and squarely on consideration of education qualification graduates alone shall go into the higher post no matter whether they were appointed as Assistant Engineers directly or by promotion"

58. Therefore, it is clear that on the basis of educational qualifications Assistant Engineers from among the Diploma holders cannot be treated equal with that of Assistant Engineers from Degree holders and if such classification is made based on educational qualification the same will not offend the fundamental right of equality under Article 14 and 16(1) of the Constitution of India.

59. In the light of the above said legal position enunciated by the Apex Court, the Division Bench judgement of this Court dated 30.10.2003 rendered in Writ Appeal No.1542 of 1992 relied upon by Mr.N.R.Chandran learned Senior Counsel can be distinguishable on the facts since that was the case where in the Managerial category when the persons have attained the cadre of Assistant Manager either by way of promotion or by direct recruitment, thereafter there cannot be any distinction between them by placing the promotee Assistant Manager above the directly recruited persons before the promotion, which was held to be clearly arbitrary and unjustifiable. On the facts of the present case it is clear that

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

it is not a dispute between the direct recruits and promotees in this case and it is among the promotees to the post of Assistant Manager from Assistant Engineers from among Degree holders and Diploma holders and therefore, the distinction is based on the educational qualification. To fact of this case, squarely applies the judgement of the Hon'ble Apex Court in Sri Thirolokinath kosha case reported in 1974(1) SCC 19.

60. In fact the above said judgement was subsequently followed in number of cases including Mohammad Shujat Ali and others Vs. Union of India and others reported in 1975(3) SCC 76. In that case while narrating at least 3 judgements on the said issue, namely, the educational qualification, which can be basis for a valid classification, the Hon'ble Supreme Court has however, held that the test of reasonable classification has to be applied on the peculiar facts and circumstances of case in the following terms:

> "28. Now, there are three decisions of this Court where educational qualifications have been recognised as forming a valid basis for classification. In State of Mysore Vs. Narasing Rao this court held that higher educational qualifications such as success in S.S.L.C. examination are relevant considerations for fixation of higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale, and the other for non-matriculate tracers with lower pay scale, cannot be said to be violative of Article 14 or 16. So also in Union of India Vs. Dr.(Mrs.) S.B.Kohli, a Central Health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". A very similar question arose in State of Jammu & Kashmir Vs. Triloki Nath Khosa (Supra) where a rule which provided that only degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers and diploma holders shall not be eligible for such promotion, was challenged as violative of the equal opportunity clause. This Court repelled the challenge holding that "though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purposes of promotion to the cadre of Executive

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Engineers, be classified on the basis of educational qualifications" and "the rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders" was not obnoxious to the fundamental guarantee of equality and equal opportunity. But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purposes of the classification or the quality and extent of the differences in the educational qualifications. It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to be applied in such case on its peculiar facts and circumstances. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in State of Jammu & Kashmir Vs. Triloki Nath Khosa (supra) and a somewhat similar position also obtained in Union of India Vs. Dr.(Mrs.) S.B.Kohli (Supra)"

61. While holding so the Apex Court has held that on factual position the two categories of Supervisors were treated and therefore, there was no unconstitutionality or discrimination in differential treatment. In the present case as I have narrated earlier, a reference to the counter affidavit by the respondents show that they have been maintaining a separate seniority list among the Assistant Engineers between the Degree and Diploma holders. The said judgement in Tirolokinath's case was also followed in Roop Chand Adlakha and others Vs. Delhi Development Authority and others reported in 1989 Supl.(1) SCC 116. The operative portion of the judgement of the Hon'ble Apex Court as follows:

"29. In Triloki Nath case Diploma holders were not considered eligible for promotion to the higher post. Here, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma Holders - of course on the justification of the job requirements and in the interest of maintaining a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

certain quality of technical expertise in the cadre - could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited to only two choices, namely, either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma Holders conditioning it by other requirements which may, as here, include certain quantum of service experience. In the present case, eligibility determination was made by a cumulative criterion of a certain educational qualification plus a particular quantum of service experience. It cannot, in our opinion, be said, as postulated by the High Court, that the choice of the State was either to recognise Diploma holders as "eligible" for promotion or wholly exclude them as "not eligible". If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the superimposition of further conditions such as a particular period of service, selectively, on the Diploma Holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service experience. It is stated that on the basis of the "Vaish Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion, was not justified in striking down the rules as violative of Articles 14 and 16."

62. As correctly pointed out by Mr.Vijayanarayanan, learned Senior Counsel appearing for some of the respondents graduate Engineers, the Hon'ble Supreme Court has upheld the validity of quota system by following the above said trend of judgement as seen in Shamkant Narayan Deshpande Vs. Maharashtra Industrial

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Development Corporation and another reported in 1993 Supp.(2) SCC 194.

63. In considering the dispute between the Degree holders and Diploma holders in engineering service under Madras Municipality Corporation, the Hon'ble Supreme Court rendered in P.Murugesan and others Vs. State of Tamil Nadu and others reported in 1993(2) SCC 340 has held that in the Government service in Tamil Nadu the ratio of 3:1 between graduates and diplomas has been in vogue prior to 1965 in the following words:

> "22. It may also be noticed in this connection that in the Government service, the ratio of 3:1 as between graduates and diploma holders has been in vogue since prior to 1965 and the corporation has been trying to implement the said ratio in its service too."

64. While dealing with the concept of equal pay for equal work the Hon'ble Supreme Court has held in more than one occasion that classification on the basis of education qualification is permissible while quoting about the several decisions on the subject of equal pay for equal work from the judgement reported in 1982(1) SCC 618, the Hon'ble Apex Court ultimately held that the burden is upon the petitioners to establish the right to equal pay or even the plea of discrimination and ultimately holding that education qualification can be the basis for classification even if the persons were doing the same kind of work. In this regard the judgement rendered in Sita Devi and others Vs. State of Haryana and others reported in 1996(10) SCC 1 has settled the legal position in the following manner:

> "3. The doctrine of "equal work for equal pay" is recognised by this Court as a facet of the equality clause contained in Article 14 of the Constitution. The first of the several decisions on the subject is Randhir Singh Vs. Union of India. The said doctrine has been dealt with by this Court in several later decisions including State of M.P. Vs. Pramod Bhartiya decided by the three-member Bench of which one of us (B.P.Jeevan Reddy,J.) was a member. This decision dealt mainly with the manner in which the claim of equal work has to be judged. It was held, after referring to the definition of "same work or work of a similar nature" in Section 2 (h) of the Equal Remuneration Act, 1976, that: (SCC p.547, para 13)
>
> > "... the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> Mukharji,J. (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. ....It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be."

4. It was observed in the said decision, on the basis of the earlier decisions of this Court, that where the petitioners complain of unlawful discrimination offending Article 14, it is for them to satisfy the court that the distinction made is irrational and baseless and that it really amounts to unlawful discrimination prohibited by Article 14. Applying the principle of the said decision to this case, can it be said that the petitioners herein who are non-matriculate instructors are similar placed to that of the matriculate instructors or that the distinction made between both the categories is irrational or baseless. In other words, the question is whether the Government of Haryana is guilty of unlawful discrimination in refusing to extend to non-matriculate instructors the pay scale which has been extended to matriculate instructors pursuant to the judgement of this Court in Jaipal. We do not think so. Classification on the basis of educational qualifications has always been upheld by this Court as reasonable and permissible under Article 14. In State of Mysore Vs. P.Narasinga Rao the Government of Karnataka had two different scales for tracers - one for matriculate tracers with higher scale and another for non-matriculate tracers with lower pay scale. The non-matriculate tracers complained of discrimination. The said plea was negatived holding that prescribing two different scales for matriculates and non matriculates is not violative of Article 14 and 16. It was held that distinction made on the basis of technical qualifications or for that matter even on the basis of general educational qualifications relevant to the suitability of the candidate for public service is permissible under the said articles. Indeed, in that case both the matriculate and non matriculate tracers formed one single category with one single pay scale earlier. It was only at a later stage that a distinction was made between matriculates and non matriculates, which led to the said proceedings. This court proceeded on the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

assumption that both matriculates and non matriculates tracers "were doing the same king of work"; yet the classification made was upheld as permissible under Article 14 and 16 of the Constitution. Distinction on the basis of educational qualifications has been upheld as valid by this Court in a large number of cases since. By way of illustration, in State of J&K Vs. Triloki Nath Khosa the classification of Assistant Engineers as diploma holders and degree holders and providing more promotional avenues to degree holders was upheld as reasonable. The later decision in P.Murugesan Vs. State of Tamil Nadu is also to the same effect. In this decision, all the decisions on the subject of classification on the basis of educational qualifications have been fully discussed."

65. The said principle was again reiterated in Rajasthan State Electricity Board Accountants Association, Jaipur Vs. Rajasthan State Electricity Board and another reported in 1997(3) SCC 103.

66. As correctly pointed out by Mr.Vijayanarayanan, learned Senior Counsel the Hon'ble Supreme Court has also held that providing of quota in the promotional post for a specified category of personal when the feeder cadre consists of different categories of persons, does not amount to reservation within the meaning of Article 16(4) and therefore, held that such quota is valid in law. That was the judgement rendered in Kuldeep Kumar Gupta and others Vs. H.P.State Electricity Board and others reported in 2001(1) SCC 475. There, one of the questions involved was when the feeder cadre of Junior Engineers in the H.P.State Electricity Board having been filled up from two recruitment sources one by qualified Diploma holders by way of direct recruitment and the other by unqualified Matriculate, ITI certificate holders by promotion, can there by a separate consideration for them in the matter of promotion to the post of Assistant Engineer and whether such separate consideration violates any constitutional mandate. The issue involved is almost like that which arise in the present case also wherein the promotion of Junior Engineers from among the Diploma holders to that of the Assistant Engineers and directly recruited Assistant Engineers from Degree holders and when they are considered for the next cadre of Assistant Manger whether the same can be considered to be violative of the constitution mandate. It was while dealing with the said question the Hon'ble Supreme Court has held that even in cases where the direct recruits and promotees are integrated into a common class, they could for the purpose of promotion be classified on the basis of education qualification as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"So far as the first question is concerned, it is no doubt true that in earlier decisions of this Court in Roshan Lal Tandon and Mervyn Continho this Court has held that once the direct recruits and promotees were absorbed in one cadre, they form one class and they chould not be discriminated against, for the purpose of further promotion to the higher grade. But this view has not been found favour with in the later Constitution Bench decision in Triloki Nath Khosa. It has been laid down in the aforesaid case that even where direct recruits and promotees are integrated into a common class, they could, for the purpose of promotion to the higher cadre be classified on the basis of educational qualification. It was held by this Court in Triloki Nath that classification in matters of promotion with academic or technical qualification as a basis is a matter for legislative determination and such a classification is permissible unless it is found to be unjust on the face of it and the onus lies upon the party attacking the classification to show by pleadings the necessary material before the Court that the said classification is unreasonable and violative of Article 16. It is in that context the Court further observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and that being the position, it would be for the party assailing such classification to establish that the classification is unreasonable and bears no rational nexus with its purported object. In the absence of furnishing necessary particulars, it must be construed that the plea of unlawful discrimination had no basis. In Triloki Nath a word of caution has been indicated that the right to classify is hedged in with salient restraints. Classification must be truly funded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved and judicial scrutiny extends only to the consideration whether the classification rests on a reasonable basis and whether it bears a nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation on the basis of classification. In Triloki Nath the Court held that Roshan Lal case is no authority for the proposition that there cannot be a classification for the purpose of promotion on a basis other than the one that they were drawn from different sources. Triloki

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Nath thus distinguishes both the earlier decisions in Mervyn Continho and Roshan Lal Tandon. Triloki Nath has been followed in Murugesan where this Court held that it would be open for the rule making authority, having regard to the efficiency of the administration and other relevant circumstances to restrict the chance of promotion of the less qualified people in the feeder category. In Murugesan the Court upheld the quota in the matter of promotion in favour of graduate Engineers. It may be noticed that in Murugesan the Court overruled the earlier decision in Punjab SEB distinguished in Abdul Basheer case. The contention of Mr.Subramanium, is no doubt that there can be a classification in favour of the qualified people having regard to the efficiency of the administration but a classification in the manner of providing a quota for unqualified people cannot be held to be in the interest of administration and, therefore, cannot be sustained on the principles of Murugesan. We are unable to accept this contention of the learned counsel for the appellants. Once a classification is permissible notwithstanding that the feeder category is one, when the said classification is challenged as being discriminatory, then unless and until sufficient materials are produced and it is established that it is unjust on the face of it by the persons assailing the classification, the Court would be justified in coming to the conclusion that such plea of unlawful discrimination had no basis, as was observed in Triloki Nath Adjudged from the aforesaid standpoint when the pleadings in the case in hand are examined, we do not find any materials to sustain the plea of discrimination raised by the appellants, who are direct recruit diploma holder Junior Engineers. In the case in hand, the Regulations from time to time on being examined, unequivocally show that right from the inception, quota has been provided for promotion in favour of the unqualified promotee Junior Engineeers, though the quota has been changed from time to time and while providing such quota, longer experience as Junior Engineer has been the basis for being eligible for promotion. Providing such a quota in the service history right from the inception is also a germane consideration for the Court while considering the question of alleged discrimination. That apart when the feeder category itself is filled up by direct recruit diploma holders and promotee unqualified matriculates and if no quota is provided for such unqualified matriculates in the promotional cadre of Assistant Engineer then they may stagnate at that stagnate at that stage which will

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

not be in the interest of administration. If the rule making authority on consideration of such stagnation, provides a quota for such unqualified promotee Junior Engineers, the same cannot be held to be violative of any constitutional mandate and on the other hand would come within the ratio of Murugesan. In our considered opinion, therefore, there can be a separate consideration for the promotee unqualified matriculate Junior Engineer in the matter of promotion to the post of Assistant Engineer and the impugned Regulation providing a quota for them cannot be held to be violative of Article 14."

That was again the ratio followed in the judgement rendered in K.R.Lakshman and others Vs. Karnataka Electricity Board and others reported in 2001(1) SCC 442.

67. In fact in another later judgement, the Hon'ble Apex Court's view has been confirmed as held in Chandravathi P.K. and others Vs. C.K.Saji and others reported in 2004(3) SCC 734 in the following words:

"41. It is well settled that classification on the basis of educational qualification is a reasonable one and satisfies the doctrine of equality as adumbrated in Article 14 of the Constitution of India."

68. Therefore, the combined effect of the entire facts and circumstances of this case as I have enumerated above including the contents of the counter affidavit filed on behalf of the respondents wherein it is elicited that there has been a separate seniority list among the Assistant Engineers drawn from Diploma holders and Degree holders separately and also considering the overall legal position as settled by the various judgements of the Hon'ble Supreme Court upholding the validity of quota system, recognizing educational qualification being an approved method of classification for promotion, the concept of equal pay for equal work can be subject to further classification based on qualifications, I am of the considered view that the Common Service Rules governing the respondent Corporations in respect of promotion to the post of Assistant Managers in the managerial cadre from the feeder category of Assistant Engineers in the Supervisory cadre on the quota of 3:1 between the Degree holders and Diploma holders holding the post of Assistant Engineers is reasonable classification and permissible in law.

69. Further taking into consideration, the historical background of the concept of quota system, which is admittedly in existence in the State from 1965 onwards in various departments between Degree holders and Diploma holders and also the necessity

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of maintaining of efficiency in service whether the required qualification is necessary for discharge of duties in the higher posts is for the authorities to stipulate. As per the wordings of the Hon'ble Supreme Court in the judgement rendered in T.R.Kothandaraman and others Vs. Tamil Nadu Water Supply and Drainage B.D. and others reported in 1994(6) SCC 282:

> "13. The aforesaid bird's eye view of important decisions of this Court on the question of prescribing quota in promotion to higher post based on the educational qualification makes it clear that such a qualification can in certain cases be a valid basis of classification; and the classification need not be relatable only to the eligibility criteria, but to restrictions in promotion as well. Further, even if in a case the classification would not be acceptable to the court on principle, it would, before pronouncing its judgement, bear in mind the historical background. It is apparent that while judging the validity of the classification, the court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post."

70. I have no hesitation to come to the conclusion that the impugned provision of the Common Service Rules and also the consequential orders of the respondents based on the same are not in violation of Article 14 and 16(1) of the Constitution of India and in view of the same the Writ petitions fail and the same are dismissed. No Costs. Consequently, the connected M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nbj

To

1.The Chairman/Secretary
State of Tamil Nadu
Transport Department,
Fort St. George, Chennai-9.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.The Managing Director
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,Salem-7.

3. The Managing Director
Tamilnadu State Transport Corporations(Villupuram) ltd.,
Rangapuram, Villupuram District.

4.The Managing Director
Metropolitan Transport Corporation Ltd., (Chennai)
Pallavan Salai, Chennai -2.

5.The Managing Director
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai-2.

6.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore)Ltd.,
37, Mettupalayam Road, Coimbatore.

7.The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Ltd.,
Railway Station New Road,Kumbakonam.

8.The Managing Director,
Tamil Nadu State Transport Corporations
(Madurai) Ltd., Bye Pass Rod,Madurai.

+1cc to Mr.K.Rajasekar, Advocate Sr 19628
+4ccs to Govt. Pleader Sr 19794,19430 to 19432
+1cc to Mr.S.M.Subramaniam Advocate Sr 19251
+1cc to Mr.M.Sriram, Advocate Sr 19150
+1cc to Mr.L.Chandrakumar, Advocate Sr 19915
+4ccs to Mr.M.Ravi Bharathi, Advocate Sr 20023
+1cc to Mr.S.Packiaraj, Advocate Sr 19898
+1cc to Mr.N.Subramaniyan, Advocate Sr 19195
+1cc to Mr.D.Hariparanthaman, Advocate Sr 19526

WEB COPY

VC (CO)
kk ,km,Sg, Sr

https://hcservices.ecourts.gov.in/hcservices/